

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

MULTI-THERAPEUTIC SERVICES, INC.
and ELLEN WIGGINS
Respondents

Case No.: I-00-40335

FINAL ORDER

I. Introduction

On June 21, 2001, the Government served a Notice of Infraction (No. 00-40335) upon Respondents Multi-Therapeutic Services, Inc. (“MTS”) and Ellen Wiggins, alleging a violation of 22 DCMR 3502. That regulation contains twenty-one separate subsections prescribing standards for meal service and dining areas in group homes for mentally retarded persons. The Notice of Infraction, however, describes the nature of the infraction as “fire alarm system to the facility is out of service.” The Notice of Infraction alleges that the violation occurred on June 5, 2001 at 6217 16th Street, N.W. and seeks a fine of \$500.

On July 6, 2001, Respondents filed a timely plea of Admit with Explanation, together with a request for suspension or reduction of the fine. On July 26, 2001, the Government filed a response, opposing any suspension or reduction.

II. Summary of the Evidence

Respondents state that the “fire protection system” (an apparent reference to the fire alarm system) in the group home was under repair during an inspection by the fire marshal, but that other fire protection measures, referred to by Respondents as a “secondary system,” were in place at all times. Those measures included fire extinguishers on all floors, an automatic sprinkler system and monthly fire drills. They also state that they sought advice from both a fire protection consultant and from the alarm system’s manufacturer in accomplishing the repairs and that they maintained “open communications” with the fire inspector regarding the scope of the problem and the repair activities.

The Government responds that the Fire Department inspected the group home on June 5th, 7th and 13th, and found it out of compliance on all three days. The secondary system, therefore, was not acceptable under the fire code. It also asserts that Respondents have been unable to renew the license for the facility, which expired in August 2000, due to “persistent” fire code violations there. Respondents have not disputed the Government’s allegations.

III. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating at least one of the provisions of 22 DCMR 3502 on June 5, 2001.
2. The fire alarm system in Respondents’ group home was inoperative on June 5, 2001, and remained inoperative at least until June 13, 2001.
3. Respondents had certain alternative fire protection measures in place but the facility remained out of compliance with the fire code for more than a week.

4. Respondents have acknowledged responsibility for their violation.
5. MTS has a history of recent non-compliance with the regulations governing group homes, having been found liable for violations in at least six cases that have been closed by this administrative court.¹

IV. Conclusions of Law

1. By pleading Admit with Explanation, Respondents have admitted that they committed the violation charged in the Notice of Infraction and have waived any defects in that notice. *DOH v. White*, OAH No. I-00-40306 at 4 (Final Order, June 22, 2001); *DOH v. Jackson*, OAH No. I-00-40360 at 4 (Order Closing Matters, April 11, 2001). Thus, the Government's erroneous citation of 22 DCMR 3502 – the regulation governing meals and dining practices – when it apparently intended to charge a violation of a regulation dealing with fire safety, is of no consequence.
2. A fine of \$500 is prescribed for violations of § 3502. 16 DCMR 3239.2(a).² Respondents' acceptance of responsibility normally would lead to some reduction of that fine, but the seriousness of the violation outweighs any such mitigation in this case. Having an inoperable fire alarm system for more than a week created a serious

¹ The cases in which MTS has been found liable, whether by plea of Admit or Admit with Explanation, or after a trial upon a plea of Deny, are OAH Case Nos. I-00-40087 (Final Order, June 26, 2000); I-00-40122 (Final Order, April 9, 2001); I-00-40123 (Closure Order, September 15, 2000); I-00-40124 (Final Order, March 2, 2001); I-00-40137 (Closure Order, June 14, 2001) and I-00-40264 (Closure Order, September 15, 2000).

² A \$500 fine is also prescribed for "failure to comply with the requirements concerning fire safety." 16 DCMR 3239.2(b) (citing 22 DCMR 3505). Thus, the Government's erroneous citation has not prejudiced Respondents because it has not affected the amount of the fine at issue.

risk to the residents of the group home. Respondents' "secondary protection system" could not eliminate that danger.

3. MTS's prior violations preclude a downward adjustment in the fine for a history of prior compliance.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Code §§ 6-2714 and 6-2715, now codified as D.C. Code §§ 2-1802.04 and 2-1802.05 (2001 ed.); and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to section 203(i)(1) of the Civil Infractions Act, D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001, now codified as D.C. Code § 2-1802.03(i)(1) (2001 ed.) ; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including

the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), now codified as D.C. Code § 2-1802.03(f) (2001 ed.), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), now codified as D.C. Code § 2-1802.03(i) (2001 ed.) and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(7), now codified as D.C. Code § 6-1801.03(b)(7) (2001 ed.).

/s/ **10/31/01**

John P. Dean
Administrative Judge